



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

405

December 19, 1951

Hon. Sam Lee
County Attorney
Brazoria County
Angleton, Texas

Opinion No. V-1378

Re: Which county has venue in
a hot check criminal prosecution
when a check is drawn in one county
upon a bank in that county and is
mailed from that county to a payee
located in another county.

Dear Sir:

You have requested an opinion of this office
based in part on the following fact situation:

"A" would write a check in Galveston County, Texas; the check would be mailed in Galveston County and written on a Galveston County bank. The check would be placed in an envelope and addressed to a person in Brazoria County and the Brazoria County recipient of the check would endorse the same, place it in one of the Brazoria County banks for collection, and upon being returned to the Galveston County bank the check would either be marked insufficient funds or no such account, and the recipient of the check in Brazoria County would present himself to my office to file a hot check complaint after having given due notice."

Your question with regard to these facts is,
"Does venue lie in Brazoria County for purposes of criminal prosecution under the hot check law of Texas?"

Section (1) of Article 567b, V.P.C., was amended by House Bill 403, Acts 52nd Legislature, R.S. 1951, ch. 305, p. 496, to read as follows:

"It shall be unlawful for any person to procure any article or thing of value, or to secure possession of any

personal property to which a lien has attached, or to make payment of any pre-existing debt or other obligation of whatsoever form or nature, or for any other purpose to make or draw or utter or deliver, with intent to defraud, any check, draft or order, for the payment of money, upon any bank, person, firm or corporation, knowing at the time of such making, drawing, uttering or delivering, that the maker, or drawer, has not sufficient funds in, or on deposit with, such bank, person, firm or corporation, for the payment of such check, draft or order, in full, and all other checks, drafts or orders upon such funds then outstanding."

Neither the original or amended act has specific venue provisions. Therefore, venue is controlled by Article 211, V.C.C.P., which states, "If venue is not specifically stated, the proper county for the prosecution of offenses is that in which the offense was committed."

The offenses described in section (1), supra, are the making, drawing, uttering, or delivering with intent to defraud, any check, draft or order for the payment of money . . . " In Jones v. State, 226 S.W. 2d 437 (Tex. Crim. 1950), which involves a construction of Article 567b, V.P.C., prior to the amendment here in question, the court said at page 442:

"The judgment and sentence are reformed so as to state the offense as obtaining money with intent to defraud by drawing a check in the amount of \$50 or more without sufficient funds." (Emphasis added.)

We think this holding is applicable to the present statute, and that it clearly indicates that the gist of the offense committed is the "drawing" with intent to defraud.

In the Jones case, venue was in the county where the offense charged, the drawing, took place. In the fact situation presented by you venue would lie in Galveston County if the proof adduced at the trial supported a making or drawing of the check in Galveston

County coupled with proof of intent to defraud as required by the statute. Similarly, the venue would lie in Brazoria County if the proof adduced at the trial would support an uttering or delivery with the necessary intent in Brazoria County. See Jessup v. State, 68 S.W. 988 (Tex. Crim. 1902). Venue depends upon the offense that is proved where different offenses are committed in different counties, although they are all phases of one transaction.

Your second question is:

"If a person makes payment of child support, as provided in the decree of divorce, by making, uttering and delivering with intent to defraud a check for the payment of the same, does such a check come within the purview of the hot check law of Texas?"

The portion of Section (1), supra, which reads "or to make payment of any pre-existing debt or other obligation of whatsoever form or nature, or for any other purpose. . . ." covers, in our opinion, the giving of a "hot check" for child support payment if the other statutory requisites are present.

SUMMARY

The "Hot Check Law", Art. 567b, V.P.C., makes no provision as to venue for trial of the offenses defined. Under Article 211, V.C.C.P., the general venue statute, venue lies in the county in which the offense of making, drawing, uttering, or delivering of the "hot check" takes place. If more than one of the defined offenses occurs, and in different counties, as phases of one transaction, venue lies in any one of the counties, provided that the proof adduced was of the offense committed in the given county.

The other statutory requisites being present, the giving of a "hot check" for a

child support payment is made unlawful
by Art. 567b, V.P.C.

Yours very truly,

APPROVED:

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